# UNITED ALLIED EMPIRE SDN BHD v. PENGARAH TANAH DAN GALIAN SELANGOR & ORS

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
ZAMANI A RAHIM JCA
ZALEHA YUSOF JCA
[CIVIL APPEAL NO: B-01(A)-406-12-2015]
29 MARCH 2017

***LAND LAW:*** *Acquisition of land – Acquisition for public purpose – Application for judicial review of decision to acquire land by State Authority – Whether there was procedural impropriety or illegality – Whether there was non-compliance of s. 4(1) of Land Acquisition Act 1960 – Whether there was failure to observe statutory requirements of ss. 23 & 66 of Land Acquisition Act 1960 – Whether there was legitimate expectation for authorities to act in accordance with discretionary powers – Whether failure to perform public duties constituted mala fide – Whether there was change in public purpose of acquisition*

The appellant owned a 26 acre development project land ('the said land') and had voluntarily reserved a part of that said land measuring slightly less than an acre for the expansion of an existing mosque 'Masjid Ar-Ridwan' on the site. The said land had since become the subject of a land acquisition exercise by the Pengarah Tanah dan Galian Selangor ('first respondent') along with the second, third, fourth, fifth and sixth respondents ('the respondents') under the Land Acquisition Act 1960 ('LAA 1960'). The acquisition exercise had affected the entire area of the said land. The declared public purpose of the said acquisition was to build a 26 acre mosque as was declared in the Government *Gazette*, it acquired for 'Tujuan Tapak Masjid Ar-Ridwan.' The appellant was aggrieved by the said acquisition exercise and filed an application for leave for judicial review ('JR') of the decision to acquire the said land by the respondents, with a view to have it quashed by way of an order of *certiorari.* The Judicial Commissioner ('JC') granted the appellant leave to commence JR and a stay of all further proceedings in the acquisition of the subject land pending the disposal of the substantive JR application. The JC, having heard the application, dismissed the application. Hence, the appellant filed the present appeal. The challenge mounted by the appellant was, in the main, premised on the grounds of procedural impropriety and/or illegality, as having played a prominent role in shaping the impugned decision of the respondents. The issues that arose were (i) whether there was a serious non-compliance by the respondents in the failure to issue and serve Form A under the LAA 1960 on the appellant; (ii) whether mere issuance of Form K without the required endorsement of the memorial under ss. 23

and 66 of the LAA 1960 was sufficient in order to effectively or conclusively vest the title of the said land to the State Authority; (iii) whether there was legitimate expectation for the respondents to act in accordance with the discretionary powers conferred upon them; (iv) whether the respondents' failure to perform public duties constituted *mala fide;* and (v) whether there was a change in the public purpose of the acquisition.

**Held (allowing appeal)**
**Per Abang Iskandar JCA delivering the judgment of the court:**

**(1)** The statutory provisions as stipulated under s. 4(1) of the LAA 1960 are mandatory requirements, as the words which were employed by Parliament were clearly meant to convey the intention, in that Form A must be issued by the respondents when undertaking a land acquisition exercised under the LAA 1960. In this case, Form A was not issued at all thus it could not possibly and factually be published as required, in the Government *Gazette*. The acquisition was therefore not done in compliance with the imperative dictates of the statutory provision in s. 4(1) of the LAA 1960. There was a failure to follow the correct lawful procedure and there was illegality committed by the respondents in the course of compulsorily acquiring the subject land belonging to the appellant in this case. A grave non-compliance of s. 4(1) of the LAA 1960 had been committed by the respondents. (paras 11, 14, 16 & 21)

**(2)** The cumulative effect of ss. 23 and 66 of the LAA 1960 read with Circular no. 27/2009 had been that the endorsement of the memorial on the issue of Form K on the IDT of the acquired land was mandatory and that only upon such positive act having been done, shall the title of the said land 'vest in the State Authority as State land.' The respondents had not acted according to their own standard operating procedure as per the Circular no. 27/2009. The net effect of this failure to observe the statutory requirements of ss. 23 and 66 of the LAA 1960 and of its own Circular no. 27/2009 must necessarily be that the said land had not vested in the State Authority although Form K may have been issued and gazetted. As such, the appellant was still competent to stake and pursue its challenge against the purported acquisition of the said land. This scenario had revealed an instance of the decision-maker not comprehending the exercise of legal power that it was performing, *to wit*, the express statutory provisions under the LAA 1960. That was a recognised head for quashing such a decision by way of JR. (paras 34 & 35)

**(3)** The respondents' affidavit in response to the assertions made by the appellant was a curious mix of bare denials, contradictions of themselves and each other, blaming each other or just plain outright failure and/or refusal to answer the points raised. The intentional evasive conduct on the part of the respondents in failing to answer with required candour in the performance of their public duty constituted *mala fide* in the sense that it was done so as to deny the appellant what was its rightful property. *Mala fide* is incongruous with the essence of natural justice which advocates fairness and fair play. As a ground of challenge against a decision of a decision-maker, it would fall squarely in the recognised head of procedural impropriety. (para 38)

**(4)** The declared purpose for which the said land was to be acquired was for the public purpose of building a mosque. However, what the respondents had affirmed in their affidavits clearly depicted a wider and expansive purpose than what was declared in the Government *Gazette*. As such, it was erroneous on the part of the JC to have ruled that there was no change in the purpose for which the said land was to be acquired by the respondents. It was not open for the respondents to freely ignore the existence of the appellant's legitimate expectation that the respondents would act in accordance with the discretionary powers or duties lawfully conferred upon them by acquiring what was needed and not more than what was needed. It would be incredulous to compulsorily acquire the entire land belonging to the appellant of about 26 acres for the purpose of building a mosque, even if such exercise would include erecting buildings normally associated with a mosque. (paras 40-41)

**(5)** The JC had erred in coming to her decision in dismissing the application for JR of the land acquisition of the appellant's land. This was a fit and proper case whereby this court ought to invoke its appellate powers in order to right what had been proven to be a grave wrong occasioned to the appellant. The JC had failed to sufficiently appreciate the evidence led before her and that had led her to come to a plainly wrong decision, which ought to be set aside. (para 45)

***Bahasa Malaysia*** *Headnotes*

Perayu memiliki 26 ekar tanah projek pembangunan ('tanah tersebut') dan dengan sukarela merizabkan sebahagian tanah tersebut yang berukuran kurang satu ekar untuk pembesaran masjid sedia ada iaitu 'Masjid Ar-Ridwan' di tapak itu. Tanah tersebut telah menjadi subjek perkara langkah pengambilan tanah oleh Pengarah Tanah dan Galian Selangor ('responden pertama') bersama-sama dengan responden kedua, ketiga, keempat, kelima dan keenam ('responden-responden') bawah Akta Pengambilan Tanah 1960

('APT 1960'). Langkah pengambilan tanah memberi kesan pada seluruh kawasan tanah tersebut. Tujuan umum diisytiharkan pengambilan tersebut adalah untuk membina sebuah masjid seluas 26 ekar seperti yang diisytiharkan dalam *Warta* Kerajaan, tanah tersebut diambil untuk 'Tujuan Tapak Masjid Ar-Ridwan'. Perayu terkilan dengan langkah pengambilan tersebut dan memfailkan permohonan kebenaran untuk semakan kehakiman ('SK') keputusan pengambilan tanah tersebut oleh responden-responden, dengan niat membatalkannya melalui perintah *certiorari*. Pesuruhjaya Kehakiman ('PK') membenarkan perayu memulakan SK dan untuk penangguhan semua prosiding dalam pengambilan tanah subjek sementara menunggu pelupusan permohonan SK. Setelah mendengar permohohan, PK Mahkamah Tinggi menolak keputusan. Oleh itu, perayu memfailkan rayuan ini. Bantahan perayu adalah berdasarkan alasan-alasan ketidakpatuhan prosedur dan/atau tidak sah, yang memainkan peranan penting dalam mencapai keputusan responden-responden yang dipertikaikan. Isu-isu yang timbul adalah (i) sama ada terdapat ketidakpatuhan oleh responden-responden dalam kegagalan menyerahkan Borang A bawah APT 1960 kepada perayu; (ii) sama ada pengeluaran Borang K sahaja tanpa pengesahan peringatan yang diperlukan bawah ss. 23 dan 66 APT 1960 mencukupi untuk, secara efektif dan konklusif, meletak hak tanah tersebut pada Pihak Berkuasa Negeri; (iii) sama ada terdapat harapan sah untuk responden-responden bertindak menurut kuasa budi bicara yang diberikan kepada mereka; (iv) sama ada kegagalan responden-responden melaksanakan tugas awam membentuk *mala fide*; dan (v) sama ada terdapat perubahan dalam tujuan awam pengambilan tanah itu.

**Diputuskan (membenarkan rayuan)**
**Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:**

**(1)** Peruntukan statutori seperti yang dinyatakan bawah s. 4(1) APT 1960 adalah keperluan mandatori, kerana perkataan yang digunakan oleh Parlimen dengan jelasnya bermaksud untuk menyampaikan hasrat, bahawa Borang A harus dikeluarkan oleh responden-responden semasa menjalankan latihan pengambilan tanah bawah APT 1960. Dalam kes ini, Borang A tidak dikeluarkan dan oleh itu tidak mungkin diterbitkan seperti yang diperlukan, dalam *Warta* Kerajaan. Pengambilan dengan itu tidak mematuhi perintah penting peruntukan statutori bawah s. 4(1) APT 1960. Terdapat kegagalan mengikut prosedur undang-undang betul dan satu tindakan tidak sah telah dilakukan oleh responden-responden semasa pengambilan tanah subjek yang dimiliki perayu dalam kes ini. Satu ketidakpatuhan serius s. 4(1) APT 1960 telah dilakukan oleh responden-responden.

**(2)** Kesan kumulatif ss. 23 dan 66 APT 1960 dibaca bersama-sama dengan Pekeliling no. 27/2009 adalah bahawa pengesahan peringatan berkenaan isu Borang K tanah yang diambil adalah mandatori dan hanya apabila tindakan positif itu dilaksanakan, barulah hak milik tanah itu 'vest in the State Authority as State land'. Responden-responden tidak bertindak menurut prosedur operasi standard Pekeliling no. 27/2009. Kesan kegagalan mematuhi keperluan statutori ss. 23 dan 66 APT 1960 dan pekelilingnya sendiri iaitu Pekeliling no. 27/2009 adalah bahawa tanah tersebut tidak terletak hak pada Pihak Berkuasa Negeri walaupun Borang K mungkin dikeluarkan dan diwartakan. Oleh itu, perayu masih kompeten memegang dan meneruskan cabarannya terhadap pengambilan tanah tersebut. Senario ini telah mendedahkan satu keadaan yang mana pembuat keputusan tidak memahami pelaksanaan kuasa undang-undang yang dilakukannya, iaitu, peruntukan statutori nyata bawah APT 1960. Ini adalah alasan yang diiktiraf untuk membatalkan keputusan sebegitu melalui SK.

**(3)** Afidavit balasan pernyataan dibuat oleh perayu adalah gabungan penafian semata-mata, bercanggah sesama sendiri dan antara satu sama lain, menyalahkan satu sama lain atau kegagalan secara terang-terangan dan/atau enggan menjawab hujah-hujah yang dibangkitkan. Kelakuan mengelirukan yang disengajakan responden-responden dalam kegagalannya menjawab dengan ketulusan yang diperlukan dalam pelaksanaan tugas awam membentuk *mala fide* kerana menafikan perayu hartanahnya yang sah. *Mala fide* tidak sejajar dengan inti pati keadilan asasi menyokong keadilan. Sebagai alasan bantahan terhadap keputusan pembuat keputusan, ini diiktiraf sebagai ketidakpatuhan prosedur.

**(4)** Tujuan pengisytiharan pengambilan tanah tersebut adalah untuk tujuan awam membina sebuah masjid. Walau bagaimanapun, responden-responden mengesahkan afidavit mereka dengan jelasnya menggambarkan tujuan yang lebih luas daripada apa yang diisytiharkan dalam *Warta* Kerajaan. Oleh itu, PK terkhilaf apabila memutuskan bahawa tiada pertukaran dalam tujuan pengambilan tanah tersebut oleh responden-responden. Tidak terbuka untuk responden-responden mengabaikan jangkaan perayu supaya responden bertindak menurut kuasa budi bicara atau tugas undang-undang yang diberikan dengan mengambil apa yang diperlukan dan bukan melebihi apa yang diperlukan. Adalah sangsi untuk mengambil secara wajib seluruh tanah kepunyaan perayu iaitu 26 ekar untuk tujuan membina masjid, walaupun langkah sebegitu termasuk mendirikan bangunan yang biasanya dikaitkan dengan sebuah masjid.

**(5)** PK terkhilaf dalam menolak permohonan SK berkenaan pengambilan tanah perayu. Ini adalah kes yang sesuai untuk mahkamah menggunakan kuasa-kuasa rayuan memperbetulkan apa yang terbukti satu kesalahan besar terhadap perayu. PK gagal mempertimbangkan keterangan di hadapannya yang menghasilkan keputusan yang jelas salah dan diketepikan.

**Case(s) referred to:**

*Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA* ***(refd)***

*Council of Civil Service Unions v. Minister for the Civil Service [1984] UKHL 9* ***(refd)***

*Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC* ***(refd)***

*Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC* ***(refd)***

*Harapan Permai Sdn Bhd v. Sabah Forest Industries Sdn Bhd [2011] 1 CLJ 285 CA* ***(refd)***

*Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor [2014] 7 CLJ 882 CA* ***(not foll)***

*Kabushiki Kaisha Ngu v. Leisure Farm Corporation Sdn Bhd & Ors [2016] 8 CLJ 149 FC* ***(refd)***

*Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC* ***(refd)***

*Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC* ***(refd)***

*Morelle v. Wakeling [1955] 2 QBD 379* ***(refd)***

*Pengarah Tanah dan Galian v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC* ***(refd)***

*Ravindran P Muthukrishnan v. Malaysian Examinations Council [1984] 1 CLJ 232; [1984] 1 CLJ (Rep) 320 FC* ***(refd)***

*Syed Omar Abdul Rahman Taha Alsagoff & Anor v. The Government of the State of Johore [1978] 1 LNS 190 PC* ***(refd)***

**Legislation referred to:**

Federal Constitution, art. 13
Interpretation Acts 1948 and 1967, s. 3
Land Acquisition Act 1960, ss. 4(1), 23, 66
National Land Code, s. 8(1)(e)
Rules of Court 2012, O. 53

*For the appellant - Rosli Dahlan, Bahari Yeow & Ho Ai Ting; M/s Lee Hishamuddin Allen & Gledhill*

*For the 1st, 2nd, 3rd & 6th respondents - Naziah Mokhtar; Assistant Legal Advisor, Selangor*

*For the 4th & 5th respondents - Kama Azura Md Kamel & Siti Rahimah Kalil; M/s Aishah Kama & Sabri*

*[Editor's note: For the High Court judgment, please see United Allied Empire Sdn Bhd v. Pengarah Tanah Dan Galian Selangor & Ors [2016] 4 CLJ 796 (overruled).]*

*Reported by Suhainah Wahiduddin*

A

## JUDGMENT

**Abang Iskandar JCA:**

**Introduction**

**[1]** The salient facts of this case are as follows. The United Allied Empire
B Sdn Bhd ("the appellant") owned a 26-acre development project land ("the said land") and had voluntarily reserved a part of that said land measuring slightly less than an acre for the expansion of an existing mosque "Masjid Ar-Ridwan" on the site.

**[2]** The said land had since become the subject of a land acquisition
C exercise by the Pengarah Tanah dan Galian Selangor (first respondent), Pentadbir Tanah Daerah Kuala Selangor (second respondent), Jabatan Agama Islam Selangor (third respondent), Majlis Agama Islam Selangor (fourth respondent), Lembaga Zakat Selangor (fifth respondent) and Kerajaan Negeri Selangor (sixth respondent) (who will collectively be referred to as
D "the respondents") under the Land Acquisition Act 1960 ("LAA 1960"). The acquisition exercise had affected the entire area of the said land. The declared public purpose of the said acquisition is to build a 26-acre mosque as was declared in the Government *Gazette*, it was acquired for "Tujuan Tapak Masjid Ar-Ridwan".

E **[3]** The appellant was aggrieved by the said acquisition exercise and it had therefore, on 22 April 2013, filed an application for leave for judicial review ("JR") of the decision to acquire the said land by the respondents, with a view to have it quashed by way of an order of *certiorari*.

**[4]** On 12 February 2014, the Judicial Commissioner ("JC") granted the
F appellant leave to commence JR and a stay of all further proceedings in the acquisition of the subject land pending the disposal of the substantive JR application.

**[5]** The learned JC of the High Court sitting at Shah Alam, having heard the application, had dismissed the same with costs. In essence, the impugned
G decision has been related to the alleged wrongful acquisition of the appellant's land. It was submitted by learned counsel for the appellant that the learned JC had dismissed the application on the ground that the appellant had not made out a case for JR.

H **[6]** Being further aggrieved by the dismissal of its application for JR, the appellant had filed the present appeal now before us.

**The Appeal**

**[7]** We heard this appeal over two days on 27 September 2016 and 24 November 2016. Having considered the able submissions of all learned
I counsel, we are of the view that this appeal ought to be allowed with costs. We proffer our reasons in allowing this appeal, as follows.

**[8]** But first, we set out the issues raised by the appellant: A

(a) Unsubstantiated findings, against contemporaneous evidence.

(b) Forms A, D, and K issue, mandatory compliance required, and not conclusive vesting respectively.

(c) Procedural impropriety. B

(d) Change in purpose of acquisition.

(e) Legitimate expectation.

(f) *Mala fide.*

C

**[9]** We will deal with the issues listed as above in turns, but not necessarily in sequence. At times, we found them to be inter-related. It was clear to us that the challenge mounted by the appellant was, in the main, premised on the grounds of procedural impropriety and/or illegality, as having played a prominent role in shaping the impugned decision of the respondents. Central to this issue has been the appellant's contentions pertaining to lack of due compliance with the requirements of Form A and Form K under the LAA 1960 by the respondents. D

**[10]** In our considered opinion, there had been a serious non-compliance by the respondents in the failure to issue and serve Form A on the appellant. Form A is a statutory form that is required to be issued under s. 4(1) of the LAA 1960. We reproduce the provisions under s. 4(1) of the LAA 1960 as follows: E

**4. Preliminary notice**

(1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A **shall** be published in the ***Gazette*** (emphasis added). F

**[11]** Learned counsel submitted before us that the statutory provisions, as stipulated under s. 4(1) of the LAA 1960 are mandatory requirements, as the words which were employed by Parliament were clearly meant to convey the intention, in that Form A must be issued by the respondents when undertaking a land acquisition exercised under the LAA 1960. In essence, learned counsel for the appellant argued that this misdirection on a material fact, leading to a totally wrong finding of fact pertaining to a material and mandatory legal requirement imposed on the respondent had amounted to a serious error of law on the part of the learned JC. It was submitted before us that the use by Parliament of the word "shall" in the said sub-section was not in vain. It was meant to drive home the mandatory act to issue the Form A which then must be gazetted in the Government *Gazette*. G H I

**[12]** In response to this contention, the learned Assistant Legal Advisor for the State Government of Selangor ("the ALA") submitted before us that there was no mandatory requirement on the part of the respondents to issue Form A despite the seemingly clear wordings expressed under s. 4(1) of the LAA 1960. Learned ALA cited to us the decision in *Pentadbir Tanah Alor Gajah & 1 Or. v. Ee Chong Pang & 3 Ors*, Civil Appeal 01(f)-13-06/2012(M) ("*Ee Chong Pang* case"), a Federal Court case which had purportedly ruled that Form A under s. 4(1) was not a mandatory requirement that must be issued in a land acquisition case under the LAA 1960.

**[13]** We had occasion to peruse that apex court's order as provided to us by learned ALA during submissions. With respect, we were mindful that the issue for decision by the apex court there was whether Form A must be issued first before Form D is issued in a land acquisition exercise. The learned apex court justices had answered that question in the negative (see Tab 2 in bundle of authority of the first, second, third, and sixth respondents).

**[14]** Now, directly related and relevant to this issue had been the following factual circumstance. It did not escape our notice that the learned JC had made a finding to the effect that both Forms A and D were issued and were duly published in the Government *Gazette*, when in fact, Form A was not issued at all. The latter stated fact was admitted to by Penolong Pentadbir Tanah Daerah Kuala Selangor in his affidavit that can be found at p. 264 common core bundle vol. 1 para. 25 therein. As Form A was admittedly not issued to the appellant, it could not possibly and factually be published as required, in the Government *Gazette*. It was also in evidence that the respondents had failed to produce the relevant Form A despite being challenged to do so by the appellant.

**[15]** As such, the answer given by the apex court, which was in the negative in the *Ee Chong Pang*'s case *(supra)*, with respect, did not appear to fully cover the instant situation which obtained before us, namely, where there was a clear admission by Penolong Pentadbir Tanah Daerah Kuala Selangor that Form A was never issued at all. It is our respectful view that the answer handed down by the apex court in *Ee Chong Pang*'s case *(supra)* does not extend as far as to negate completely what is clearly intended by Parliament that has found expression in s. 4(1) of the LAA 1960. As such, we are of the view that *Ee Chong Pang*'s case *(supra)* does not advance the respondents' professed contention any much further. That decision by the apex court must therefore, be viewed and understood in its proper context, namely Form D may be issued before Form A was issued, but it did not go to the extent that Form A needed not be issued at all.

**[16]** In other words, we were of the view that Form A was still a mandatory requirement pursuant to s. 4(1) of the LAA 1960. It may be issued at a later date, but, it must be issued in a land acquisition exercise under the LAA 1960. As there was admittedly no such issuance at all of Form A and therefore no publication of the same in the Government *Gazette*, there had been a non-compliance of a legal requirement by the respondents. There was therefore, an omission to comply with a mandatory legal dictate, thereby amounting to an illegality.

**[17]** The law on JR is rather trite. Case law authorities have developed, by leaps and bounds, in this important area in the public law sphere. It is now beyond dispute that a decision made in exercise of public duty or function is susceptible to be quashed on recognised grounds by way of a JR application, as enunciated by Lord Diplock in the celebrated House of Lords decision in the case of *Council of Civil Service Unions v. Minister for the Civil Service* [1984] UKHL 9 ("the *CCSU* case"). The learned Law Lord had opined as follows:

> Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in the course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community …

**[18]** The ground of challenge premised on 'illegality' would encompass the complaints challenging the legality of the decision-maker's decision. In the *CCSU* case (*supra*), Lord Diplock had confirmed that:

> … by illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question.

**[19]** In the context of the appeal before us, the respondents had been shown to have failed to understand correctly the law which had regulated their decision-making process. In relation to the legal requirement to issue Form A as spelt out under s. 4(1) of the LAA 1960, no such Form A was ever issued. That was an admitted fact established in the relevant affidavit. A fact which the learned JC had obviously not directed her mind to. Rather, she had made two crucial findings of fact to the effect that Form A was not only issued but that it was also published in the Government *Gazette*. Suffice to

say that those findings were contrary to the evidence before her. As such, we agreed with learned counsel for the appellant that the learned JC had failed to address her mind correctly to a material fact pertaining to the non-issuance of Form A as required under the LAA 1960.

**[20]** However, that having been said, the factual circumstance that matters in this JR application remained the fact that no Form A was ever issued, let alone gazetted, as was admitted as that pointed to the allegation that the acquisition of the appellant's land was done not in accordance with the law, or put simply, it was acquired illegally by the respondents. That misdirection had seriously compromised the learned JC's decision in that she had failed to see failure on the part of the respondents to comply with a mandatory requirement under s. 4(1) of the LAA 1960.

**[21]** The acquisition was therefore done not in compliance with the imperative dictates of the statutory provision in s. 4(1) of the LAA 1960. There was established by the appellant that there was a failure to follow the correct lawful procedure and that there was illegality committed by the respondents in the course of compulsorily acquiring the subject land belonging to the appellant in this case. Premised on the above, we were in agreement with learned counsel for the appellant that a grave non-compliance of s. 4(1) of the LAA 1960 had been committed by the respondents.

**[22]** As regards the issue of Form K, we were also in agreement with the appellant's contention that such mere issuance of Form K, without the required endorsement of the memorial under ss. 23 and 66 of the LAA 1960, would not be sufficient, in order to effectively or conclusively vest the title of the said land to the State Authority. The position that was taken by the learned JC had been that the title of the acquired land would vest in the State Authority the moment the Form K was issued. She had relied on the decision of this court in the case of *Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882 ("the *Ishmael Lim* case") to support that proposition.

**[23]** We had occasion to peruse the decision of this court in the *Ishmael Lim* case. Clearly, the factual matrix in that case is rather different to the one obtaining in this appeal presently before us. In fact, although the panel of this court was faced with the issue of Form K, the panel there was not entirely appraised with the materials that would, if placed before the panel in the *Ishmael Lim* case (*supra*), might lead the panel there to come to a different decision.

**[24]** In this case before us, the question that needed to be answered in context, has been 'when and how do the subject land vest in the State Authority as State land and whether the landowner can still seek a declaration and *certiorari* to quash the acquisition for so long as there is no

endorsement/memorial on the title to vest land in the State.' This court in the *Ishmael Lim* case *(supra)* had not considered the clear wordings of s. 66 of the LAA 1960 which language suggests that it is a mandatory requirement for a memorial to be made, in order to vest the title in the subject land to the State Authority. We reproduce the relevant portion of the judgment of this court in the *Ishmael Lim* case (*supra*), as follows:

> Upon the issuance of Borang K in 1974, the land had been vested in the State Authority notwithstanding that there was an omission to endorse the memorial on the title, which was a requirement under s. 23 of the Act. The requirement for an endorsement of the memorial was a formality and the omission to do so did not invalidate the acquisition process. As such, the purported transfer of the land in 1975 to the appellant's father and in 1992 to the appellant was void and ineffective. The acquisition process had ended in 1974. (para 39).

**[25]** We noted, with respect, that the panel of this court in the *Ishmael Lim* case (*supra*) did not refer to s. 66 of the LAA 1960. Section 66 provides for the vesting of the title in the said land to the State Authority thereby effectively reverting the acquired land as State land. It was noted too by us that this court in the *Ishmael Lim* case (*supra*) did not consider the Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 27/2009 which reaffirms effectively the position that before an endorsement or memorial of Form K is made on the issue document of title of the land, no title shall be vested in the State Authority in respect to the said acquired land. We noted that the said circular was issued by the Director General of Lands and Mines with the consent of all State Directors, and that of the Attorney-General's Chambers, to that effect, which was in consonance with the wordings of s. 66 of the LAA 1960. The said circular was also issued in exercise of the statutory provisions of s. 8(1)(e) of National Land Code ("NLC") and as such, it had not been merely a circular that was issued in exercise of the purely administrative power of the Ketua Pengarah Tanah dan Galian Persekutuan or the Director General of Lands and Mines. On the contrary, it was clearly issued under statutory provisions of the NLC, in order to give effect to the legal dictates, as contained in s. 66 of the LAA 1960. The circular is indeed a subsidiary legislation as defined by s. 3 of the Interpretation Acts 1948 and 1967. We were quite surprised that the respondents had taken a position that was in direct contradiction to that which had been its very own professed internal directive on this matter, which as was indicated by the ALA has not been expressly revoked. We now reproduce the said circular, as follows:

A **Pekeliling Ketua Pengarah Tanah Dan Galian Persekutuan Bilangan 27/2009**

Mengambil Milik (Taking Possession) Seksyen 18 dan Mengambil Milik Secara Rasmi (Taking Formal Possession) Seksyen 22, Akta Pengambilan Tanah 1960 Pekeliling ini dikeluarkan untuk memaklumkan kepada
B Pentadbir Tanah bila mengambil milik tanah (taking possession of land) menurut seksyen 18, Akta Pengambilan Tanah 1960 (selepas ini disebut sebagai "APT") boleh dibuat dan cara melaksanakannya. Pengeluaran Borang K disebut dalam APT sebagai mengambil milik/ taking possession (seksyen 18) dan penyampaian Borang K kepada penduduk/penampalan Borang K di atas tanah dipanggil sebagai mengambil milik secara rasmi/
C taking formal possession (subseksyen 22(1)).

2. APT tidak menetapkan tempoh masa pengeluaran Borang K oleh Pentadbir Tanah. Namun demikian seksyen 18 APT, memperuntukkan supaya boleh dikeluarkan dalam dua keadaan berikut:

D 2.1 mengambil milik mana-mana tanah dengan mengeluarkan Borang K pada waktu penyampaian Notis Borang H kepada penduduk tanah di bawah subseksyen 16(1) atau pada suatu masa selepas itu; atau

2.2 mengambil milik dengan mengeluarkan Borang K bagi mana-mana tanah yang dinyatakan dalam Sijil Perakuan Segera (Borang I) sama ada telah dibuat award atau belum (pengambilan milik dengan
E mengeluarkan Borang K bagi tanah yang ada bangunan hendaklah dibuat mengikut seksyen 20).

3. Mengambil milik dengan mengeluarkan Borang K tidak boleh dibuat selagi penyampaian Notis Borang H kepada penduduk tanah di bawah seksyen 16(1) tidak dilakukan atau tidak menerima arahan daripada
F Pengarah Negeri melalui Borang I. Bagi tanah yang ada bangunan, Borang K boleh dikeluarkan setelah peruntukan di bawah seksyen K hendaklah sama dengan tarikh penyampaian Borang H kepada orang menduduki tanah atau tarikh terkemudian daripadanya. Pada kelazimannya, tarikh Borang K ialah satu tarikh selepas pembayaran dibuat. Tujuannya untuk mengelak daripada caj bayaran lewat.

G 5. Mengambil milik dengan mengeluarkan Borang K, orang atau perbadanan yang bagi pihaknya tanah itu diambil masih tidak boleh memasuki tanah yang dikatakan telah diambil milik itu. Mengambil milik melalui kuat kuasa seksyen 18(a) atau (b) tidak memadai untuk membolehkan orang atau perbadanan memasuki tanah kerana tanah itu masih merupakan tanah milik dan kepunyaan tuan punya tanah.
H Memasuki secara fizikal boleh dianggap sebagai satu pencerobohan.

6. Borang K yang telah dikeluarkan hendaklah diserah kepada penduduk/ orang yang mendiami di atas tanah atau jika penduduk tidak dapat ditemui, dengan menampalkan Borang K di atas tanah itu (subseksyen 22(1)) mengambil milik secara rasmi (take formal possession) terlaksana
I dan memberi kesan seperti berikut:

6.1. pihak berkuasa yang mengambil tanah itu berhak kepada hasil keluaran;

6.2. pihak berkuasa yang mengambil tanah itu berhak untuk menduduki dan menggunakannya sebagaimana maksud pengambilan itu dibuat atau lain-lain maksud berlainan daripada maksud asal pengambilan;

6.3. penarikan balik pengambilan mengikut subseksyen 35(1) APT 1960 tidak boleh dibuat;

6.4. bermulanya tarikh genap masa (due date);

6.5. jika tanah itu diambil untuk kerajaan Persekutuan, kerajaan Negeri tidak boleh mengeluarkan apa-apa permit seperti Permit mengeluarkan Bahan Batuan atau lesen seperti Lesen Menduduki Sementara.

7. Justeru mengambil milik secara rasmi (take formal possession) adalah terlaksana mulai dari tarikh atau setelah Borang K itu dibuat memorial atau endorsan di dalam dokumen hakmilik daftar adalah tidak tepat; atau mengandaikan bahawa tindakan mengambil milik secara rasmi (take formal possession) terlaksana hanya dengan menyampaikan notis Borang K kepada tuan tanah atau pemilik berdaftar adalah salah. Mengambil milik secara rasmi (take formal possession) tidak memerlukan Pentadbir Tanah pergi ke atas tanah dan mengisytiharkan bahawa tanah tersebut telah di ambil milik secara rasmi (take formal possession).

8. Borang K yang telah dikeluarkan hendaklah juga diserahkan kepada pihak berkuasa pendaftaran (seksyen 22(b)) yang berkenaan. *Pihak berkuasa pendaftaran berkenaan apabila menerima notis Borang K, atau Pentadbir Tanah setelah melengkapkan Borang K, hendaklah membuat memorial atau endorsan dalam dokumen hak milik daftar atau lain- lain rekod yang sesuai menyatakan bahawa sama ada kesemua tanah itu atau sebahagian daripada tanah itu telah diambil dan menjadi hak Pihak Berkuasa Negeri. Memorial atau endorsan ini adalah sangat mustahak kerana selagi ianya belum dibuat, tanah itu masih dimiliki oleh tuan punya.* Antara bentuk ayat endorsan adalah seperti berikut:

Mengambil milik secara rasmi ..... Jilid No. ..... Folio No. .....Kesemua tanah ini telah diambil balik dan terletakhak pada Pihak Berkuasa Negeri sebagai tanah Kerajaan bebas daripada bebanan seperti yang dimaksudkan oleh seksyen 66 Akta Pengambilan Tanah 1960 pada ..... hb. ..... 20.....

Tarikh: .....

.....

Pendaftar/Pentadbir Tanah

ATAU

Mengambil milik secara rasmi ..... Jilid No. ..... Folio No. ..... Seluas ..... daripada tanah ini telah diambil balik dan terletakhak pada Pihak Berkuasa Negeri sebagai tanah Kerajaan bebas daripada bebanan seperti yang dimaksudkan oleh seksyen 66 Akta Pengambilan Tanah 1960 pada ..... hb. ..... 20.....

Tarikh: .....

.....

Pendaftar/Pentadbir Tanah

9. Pekeliling ini dikeluarkan dengan persetujuan semua Pengarah Tanah dan Galian Negeri dan Jabatan Peguam Negara dan berkuat kuasa mulai tarikh dikeluarkan. Dengan kuat kuasa pekeliling ini, maka Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 32/1977 dibatalkan.

tt

(DATO' ABD HALIM BIN AIN)

Ketua Pengarah Tanah dan Galian Persekutuan

No. Fail: JKPTG/101/KPU/779 Jld. 4

Tarikh: 31 Disember 2009

(emphasis added).

**[26]** In the course of oral submissions before us, learned ALA had sought to tender a new document (see Tab 1 of bundle of authority of the first, second, third, and sixth respondents) which appeared to exhibit to this court that an endorsement/memorial was indeed made on the IDT of the said land of the appellant. This new document, being in the nature of fresh evidence was not admitted by way of a proper motion to adduce fresh evidence under the Rules of the COA 1994. As such, it was not to be considered by this court. Even if it was to be considered at all, little or no weight ought to be given to it because, as submitted by learned counsel for the appellant, and which was not rebutted by the learned ALA, there was no attempt made by the respondents at the High Court proceedings to produce such a document, despite being challenged by the appellant to do so. So, for the ALA to produce such a document before us for our consideration at the eleventh hour, had indeed invited great suspicion rather than extending the intended comfort, insofar as the *bona fides* of such a move on the part of the respondents was concerned. Instead of having the effect of clearing the air on the issue pertaining to the endorsement of Form K, it had the opposite effect of further clouding the already existing murky atmosphere that was pervading the impugned land acquisition exercise.

**[27]** As such, the question of this court being bound by or departing from the decision of its earlier panel in the *Ishmael Lim* case (*supra*) does not, with respect arise. The rule on the applicable principle of binding precedents as far as the Court of Appeal is concerned has been a matter of quite lucid discussion by learned Justice Peh Swee Chin FCJ in the case of *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645. Suffice for us to state here that one of the recognised heads under which a Court of Appeal panel may not follow a decision of an earlier panel is where the latter decision was given *per incuriam*. As was defined by Sir Raymond Evershed MR in *Morelle v. Wakeling* [1955] 2 QBD 379 at p. 406, that term must be given a narrow meaning. He went on to say that '*per incuriam*' meant:

> a decision given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the court concerned so that in such cases, some part of the decision or some step in the reasoning on which it is based, is found on that account to be demonstrably wrong.

**[28]** Applying that statement of the law on what is meant by *per incuriam*, by Sir Raymond Evershed MR to the factual matrix of the case before us, it was clear to us that in the course of coming to its decision, this court in the *Ishmael Lim* case (*supra*) did not have the distinct benefit of the opportunity to consider two crucial provisions with statutory origin, namely (1) the Circular no. 27/2009 and (2) s. 66 of the LAA 1960. With respect, in the circumstances, it would not be disrespectful for this panel to differ from the decision in the *Ishmael Lim* case (*supra*). Indeed, in the context of the present appeal before us, our decision is different from the panel in the *Ishmael Lim* case (*supra*) in respect of the effect of the issue of Form K of LAA 1960 because that panel, with respect, was not appraised of s. 66 of the LAA 1960 and the Circular no. 27/2009 in its deliberation.

**[29]** In the Court of Appeal case of *Harapan Permai Sdn Bhd v. Sabah Forest Industries Sdn Bhd* [2011] 1 CLJ 285 the panel there said in para. [79] therein, as follows:

> Likewise, this specific issue was not placed before the Court of Appeal for the court's consideration.

**[30]** It concluded by stating at para. [80] therein, as follows:

> Hence, with respect, I do not propose to follow the Court of Appeal's decision in *UNP Plywood*. In *Young v. Bristol Aeroplane* [1944] 1 KB 718 it was held that a Court of Appeal is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam*, eg, where a statute or a rule having statutory effect which would have affected the decision was not brought to the attention of the earlier court. This principle was cited with approval by our Supreme Court in *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63.

**[31]** By way of reiteration, the panel of this court in the *Ishmael Lim* case (*supra*) did not have before it, the issues pertaining to the true import of s. 66 of the LAA 1960 and of Circular no. 27/2009. As such, with respect, we had decided not to follow this court's decision in the *Ishmael Lim* case (*supra*).

**[32]** According to the Circular no. 27/2009, it was stated in the clearest of terms: "*Pihak berkuasa pendaftaran berkenaan apabila menerima notis Borang K, atau Pentadbir Tanah setelah melengkapkan Borang K, hendaklah membuat memorial atau endorsan dalam dokumen hak milik daftar atau lain- lain rekod yang sesuai menyatakan bahawa sama ada kesemua tanah itu atau sebahagian daripda tanah itu telah diambil dan menjadi hak Pihak Berkuasa Negeri.* ***Memorial atau endorsan ini adalah sangat mustahak kerana selagi ianya belum dibuat, tanah itu masih dimiliki oleh tuan punya.*** (emphasis added.)

**[33]** We reproduce s. 23 and s. 66 of the LAA 1960 for ease of reference:

> **23 Entry in register**
>
> The proper registering authority, upon receipt of the notice in Form K, or the Land Administrator of his own motion after completing Form K, **shall,** upon the register document of title or other appropriate record in his possession as specified in subsection 9(2) or (3), make with respect to any scheduled land a memorial:
>
> (a) that the whole of such land has been acquired and has vested in the State Authority or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel has been acquired; or
>
> (b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired.
>
> **66 Land to vest free from incumbrances**
>
> Upon the making of a memorial under section 23 in respect of any scheduled land, the land **shall** vest in the State Authority as State land or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel was acquired, free from incumbrances.
>
> (emphasis added)

**[34]** Reading these statutory provisions as contained in s. 23 and s. 66 of the LAA 1960, we were of the view that they are express directions by the Legislature which compliance must be taken as being of a mandatory nature. The word 'shall' that was used in both sections connotes the mandatory nature of the legislative intent. As such, it was our considered view that the cumulative effect of these two sections above-quoted read with the Circular no. 27/2009 has been that the endorsement of the memorial on the issue of Form K on the IDT of the acquired land is mandatory and that only upon such positive act having been done, shall the title of the said land 'vest in the

State Authority as State land.' Absent that, as was recognised by the very document emanating from the Director General of Land and Mines *via* Circular no. 27/2009, 'Memorial atau endorsan ini adalah sangat mustahak kerana selagi ianya belum dibuat, tanah itu masih dimiliki oleh tuan punya.'

**[35]** As was alluded to by us in the previous paragraphs above, we found it rather strange that the respondents had not acted according to their own standard operating procedure as per the Circular no. 27/2009 which had been issued under statutory provisions with approval of the Attorney General's Chambers. Be that as it may, the effect of that failure to comply with ss. 23 and 66 of the LAA 1960 and the Circular no. 27/2009 must suffer the consequences. It is this. To our minds, the net effect of this failure to observe the statutory requirements of ss. 23 and 66 of the LAA 1960 and of its own Circular no. 27/2009 must necessarily be that the said land has not vested in the State Authority although Form K may have been issued and gazetted. As such, the appellant was still competent to take and pursue its challenge against the purported acquisition of said land. This scenario had revealed an instance of the decision-maker not comprehending the exercise of legal power that it was performing, *to wit*, the express statutory provisions under the LAA 1960. And that is a recognised head for quashing such a decision by way of JR. Form K may well be the last form to be issued in an acquisition exercise, but unless and until there was an endorsement as envisaged under ss. 23 and 66 of the LAA 1960, the subject land under acquisition would still belong to the landowner, not the State Authority, as it would not have become a State land.

**The Remaining Issues**

**[36]** The remaining issues that were raised by the appellant had been grounded upon grounds of legitimate expectation, *mala fide* and a change in the public purpose of the acquisition.

**[37]** Good faith or *bona fide*, presupposes the complete absence of *mala fide*, which incidentally, is the direct anti-thesis of what good faith is. *Mala fide* equals bad faith. A decision that is driven by *mala fide* is a tainted decision and could not, and ought not to be allowed to stand by a court of law. (See generally the Privy Council decision in the case of *Syed Omar Abdul Rahman Taha Alsagoff & Anor v. The Government of the State of Johore* [1978] 1 LNS 190; [1979] 1 MLJ 49 for the proposition that the declared purpose may be struck down as null and void if it could be proven that it was in fact, actuated by bad faith).

**[38]** In the context of this appeal before us, the respondents' affidavit-in-response to the assertions made by the appellant in its affidavit, was a curious mix of bare denials, contradictions of themselves and each other, blaming each other or just plain outright failure and/or refusal to answer the points

raised. The intentional evasive conduct on the part of the respondents in failing to answer with the required candour in the performance of their public duty, to our minds, constitute *mala fide*, in the sense that it was done so as to deny the appellant what was its rightful property. Indeed, an intentional or malicious refusal to perform some duty properly and reasonably, so as to deny another person of his right, is but an unmistakable façade of *mala fide. Mala fide* as a ground to strike down a decision comes under the broad category of procedural impropriety in the sense that in the decision-making process, the decision-maker is actuated by less than proper considerations, in fact by less than honest considerations. In the circumstances, it was our considered view that the learned JC's findings that "there are no procedural improprieties in the conduct of acquisition" of the said land were not founded on a sound basis and could not be sustained. *Mala fide* is also incongruous with the essence of natural justice which advocates fairness and fair play. As a ground of challenge against a decision of a decision-maker, it would, in our respectful view, fall squarely in the recognised head of procedural impropriety.

**[39]** It was also submitted before us that the respondents were evasive when confronted by the appellant as to the real reason for the acquisition. The respondents contradicted themselves respectively and also each other and finally admitted in their affidavits that the purpose of acquisition as adverted in the signboard erected on site is different from the declaration in the Government *Gazette*. In an attempt to justify the need for a 26-acre mosque, the respondents further admitted that the purpose declared in the Government *Gazette* is also different from the intended use which will include a cemetery and other buildings, none of which were properly declared in the Government *Gazette*.

**[40]** It must be borne in mind always that the declared purpose for which the said land was to be acquired was for the public purpose of building a mosque. A mosque is a mosque which is essentially a building for the primary purpose of performing prayers by members of public. In fact, the appellant had provided for an area of nearly 1 acre to be set aside from the entire area of the said land for the purpose of building a mosque in the intended housing development. That area actually commensurate with the size allocated for a mosque in the vicinity of the Bukit Berjuntai, where the said land is situated. In fact, the appellant had also set aside another area of about 38,000 sq ft for future expansion of the mosque. The respondents then averred that the said land was to be acquired for what would appear to be a mosque complex similar with training centre, cemetery and so forth so that the entire area of the said land amounting to about 26 acres was needed to be acquired. With respect, we agreed with learned counsel for the appellant

that there was change for which the said land was to be acquired by the respondents, and it was not specifically only for the purpose of building a mosque. What the respondents had affirmed in their affidavits clearly depicted a wider and expansive purpose than what was declared in the Government *Gazette*. As such, it was erroneous on the part of the learned JC to have ruled that there was no change in the purpose for which the said land was to be acquired by the respondent.

**[41]** As regards legitimate expectation, in the circumstances obtaining in this case, we were in agreement with learned counsel for the appellant that it was not open for the respondents to freely ignore the existence of the appellant's legitimate expectation that the respondents would act in accordance with the discretionary powers or duties lawfully conferred upon them by acquiring what it is needed and NOT more than what it is needed. It would be incredulous and bordering on the perverse, to compulsorily acquire the entire land area belonging to the appellant of about 26 acres for the purpose of building a mosque, even if such exercise would include erecting buildings normally associated with a mosque.

**[42]** Now, it is trite that JR has been defined and accepted as a means by which the Judiciary exercises control over the executive, in order to prevent abuse or illegal or improper exercise of power by the latter. In the celebrated case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135, learned Justice Raja Azlan Shah Ag Chief Justice Malaya (as His Majesty then was) had occasion to say that legal powers must have legal limits, for otherwise there would be dictatorship. Also, 'unfettered discretion is a contradiction in terms.'

**[43]** It would also be helpful to remind ourselves of what Lord Woolf Conyngham, the former Lord Chief Justice of England and Wales, had succinctly written, in his much-acclaimed work entitled "The Rule of Law" [2011] on the very exercise by a decision-maker of the statutory power that was conferred on him, as follows:

> First is the requirement that statutory powers should be exercised in good faith, that is, honestly. It is presumed that Parliament intends no less. It has been described that the first principle of judicial review is that a discretion must be exercised in good faith.

**[44]** In *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65, Edgar Joseph Jr FCJ in delivering the judgment of the Federal Court had occasion to say: (at p. 119)

> ... people expect fairness in their dealings with those who make decisions affecting their interests.

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## Our Conclusion

**[45]** Premised on the above considerations, we had agreed with the submissions of learned counsel for the appellant, En Rosli Dahlan that the learned JC had erred in coming to her decision in dismissing the application for JR of the land acquisition of the appellant's land. In the upshot, a case B had been made out by the appellant's learned counsel that this is a fit and proper case whereby we ought to invoke our appellate power in order to right what had been proven to be a grave wrong occasioned to the appellant. The learned JC had failed to sufficiently appreciate the evidence led before her and that had led her to come to a plainly wrong decision. According to the C Federal Court in *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1 such a situation warrants appellate intervention. We also find that the learned JC had erred in her appreciation pertaining to the true implications of Forms A and K of the LAA 1960 as well on the other issues raised by the appellant before us. We therefore set aside the decision D of the learned JC. We allowed the appeal as prayed for in the appellant's JR application as the appellant had made out their complaints against the respondents in respect to their decision in compulsorily acquiring the said land.

**[46]** For completeness, it must be recalled that the learned ALA had E submitted before us that leave ought not to be granted as the application was filed out of time. This issue was ventilated at some length in the High Court and at the end of the day, leave was granted to the appellant. The legal position that the time line within which time an aggrieved landowner must file an application for leave under O. 53 ROC 2012 to quash the adverse F decision against him is of a mandatory nature is beyond dispute. Neither is the consequence of failure to abide by such time line a matter of potential contention. Its compliance is a fundamental requirement. For those propositions, the cases of *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805 and *Ravindran P Muthukrishnan v. Malaysian Examinations Council* [[1984] 1 CLJ 232; 1984] 1 CLJ (Rep) 320. G That having been said, we were of the considered view that, premised on the apex court decision in the *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861 when a decision was first communicated to the affected landowner would depend on the circumstances of each case. In the context of this particular case, with respect we were in agreement with H learned counsel for the appellant that it ought to be when Form H was served on the appellant, bearing in mind this process is concerned with compulsory acquisition of the appellant's subject landed property. The spirit and intendment of art. 13 of our Federal Constitution ought not to be rendered merely illusory devoid of any real substance. Departing, as it were, from that

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date therefore, the appellant was within time when he filed in the leave application. In any event, the appellant had applied for an extension of time, should there be any delay on its part. The learned High Court Judge had granted his application after hearing what had been a lengthy argument by parties. He had exercised his discretion to extend time and granted the leave applied for by the appellant. No appeal was lodged against that order made in exercise of the learned High Court Judge's discretion to extend time and thereby granting leave to the appellant, by the respondents, nor was a cross-appeal filed on that issue by the respondents. The apex court decision in the case of *Kabushiki Kaisha Ngu v. Leisure Farm Corporation Sdn Bhd & Ors* [2016] 8 CLJ 149 with respect, would apply in the circumstances, against the respondents. In the circumstances, it behoves or becomes necessary upon the respondents to file in a separate notice of appeal in order to ventilate the leave issue. No such step was taken by the respondents in this case. The issue of leave concerned the jurisdiction of the court. It was ventilated before the learned High Court Judge who had decided for the appellant and granted it leave. If the respondents were aggrieved by that decision, they ought to have mounted a direct frontal attack against it by way of filing a notice of appeal and not by way of a collateral attack by merely raising it as a point during the tail end of her submission in the course of the hearing of the appellant's appeal, which had nothing to do with the leave issue.

**[47]** As indicated earlier, we allowed this appeal with costs. After hearing submissions on costs, we ordered respondent nos. 1, 2, 3 and 6 to pay costs of RM50,000 to the appellant here and below. As against respondent nos. 4 and 5, we ordered them to pay RM50,000 to the appellant here and below. All costs are subject to payment of allocatur fees. We order that the deposit be refunded to the appellant.